IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.422 OF 1996

Kovil Pillai .. Appellant

-Vs-

State
rep. by Inspector of Police
Valparai P.S.
Cr. No.26/95 .. Respondent

This criminal appeal is preferred under Section 374 Cr.P.C. against the judgment dated 11.4.1996 in S.C.No.173 of 1995 on the file of the learned II Additional Sessions Judge, Coimbatore.

!For Appellant : Mr.Swamidoss Manoharan
for Mr.Calvin Jacob

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused in a case of murder, who stood charged, tried, found guilty under Section 326 IPC and sentenced to undergo 7 years RI with a fine of Rs.1000/- in default one year RI has brought forth this appeal.
2. The brief facts necessary for the disposal of this appeal can be stated as follows:
a) P.Ws.1 to P.W.3 are the Supervisors working in Nadumalai Estate where P.W.7 was the acting Manager during the relevant time. The deceased Kumaravel was working as Writer under P.W.7. P.W.8 Kanaki Devi was the wife of the deceased. The accused Koil Pillai's son Ganesan and his daughter-in-law Bagyalakshmi were working in the same Estate. They were working under the supervision of the deceased.
b) On 13.1.1995, the said Ganesan and one person by name George were collecting the tea leaves at Field No.15 of the Estate. P.W.2 Supervisor came to know that the said Ganesan was discouraging George from collecting more laves and censured him. P.W.2 informed the same to the deceased, who in turn brought the same to the Manager of the Estate, namely, P.W.7. P.W.7 suspended the said Ganesan for 20 days. The complaint given by the deceased against the said Ganesan to the Manager was marked as Ex.P.8. The said Ganesan has

tendered explanation, which was marked as Ex.P.9. When the deceased came to know that Bagyalakshmi was also not properly doing her work, he sent her out of the work. On 30.1.1995 at about 7.00 a.m., the accused went to the house of the deceased and picked up quarrel with him. P.W. Janaki Devi was also present at the time of quarrel. The deceased has asked the accused to come to the Muster-roll building to discuss about his grievance.

c) On 31.1.1995 at about 7.00 a.m., P.Ws.1 to 3 were waiting for the arrival of the deceased at Muster-roll building. The deceased used to distribute the work to the labourers at the Muster-roll building. While the deceased was coming as usual on 31.1.1995 at about 7.00 a.m. to the Musterroll building, the accused emerged from the side of the pathway and attacked the deceased with Kavathu Knife and caused injury on the left leg of the deceased. The said occurrence was witnessed by P.Ws.1 to 3. After causing injury, the accused sped away from the scene of occurrence. The deceased was taken to the hospital. P. W.4 Doctor Thambiran gave treatment to the deceased at about 7.50 a.m. On 31.1.1995. Ex.P.2 is the accident register issued by the said doctor. P.W.4 sent the intimation to the police under Ex.P.3. He also sent the death intimation to the police under Ex.P.4. P.W.14 Duraisamy Head Constable attached to Valparai Police Station on intimation went to the hospital and got the intimation that Kumaravel had died. He obtained the statement of P.W.1. On the strength of Ex.P.1 complaint, P.W.14 registered a case in Crime No.26 of 1995 under Section 302 IPC against the accused. Ex.P.20 printed F.I.R was despatched to the concerned court, while the copies were sent to the higher officials.

d) P.W.15 Easwaran Inspector of Police on receipt of the F.I.R took up investigation, proceeded to the site of occurrence at about 10.30 a.m. and prepared observation mahazar Ex.P.10 in the presence of P.W.9 and another witness by name Veeriah and h so prepared rough sketch under Ex.P.21. He seized the blood stained earth M.O.4 and the sample earth M.O.5 in the presence of the same witnesses under Ex.P.11 mahazar. P.W.11 photographer took photographs and photographs M.Os6 to 10 were taken. The Investigating Officer conducted inquest in the presence of the panchayatdhars and prepared Ex.P.23 inquest report. On request made by the Investigating Officer, P.W.5 Dr.Mary Sugantha attached to Government Hospital, Valparai has conducted autopsy on 31.1.1995 at about 2.00 p.m. Ex.P.6 was the post-mortem certificate. He narrated the injuries found on the body and has opined that the deceased would appear to have died of shock due to massive haemorrhage due to injury to important blood vessels approximately about 6 hours prior to autopsy.

e) On 1.2.1995 at about 9.10 a.m. near the bus stop of Nadumalai Estate, P.w.15 arrested the accused in the presence of P.W.10 and another witness Rajan and obtained confessional statement from the accused. The admissible portion of the confessional statement was marked as Ex.P.12. Pursuant to the same, the accused/appellant produced the blood stained Kavathu knife M.O.1 under Ex.P.13 mahazar in the presence of the said witnesses. P.W.15 brought the accused along with the knife to the police station and on finding that the accused has sustained some injuries, he has sent the accused to the hospital for treatment with a memo. On requisition made by the Investigating Officer, the Judicial Magistrate, Valparai sent M.Os.1 to 5 for chemical examination under Ex.P.15. The biology report Ex.P.16, serology report Ex.P.17 and the chemical analysis report Ex.P.18 were received. P.W.15

recorded the statement of all other witnesses. On completion of the investigation, he filed a charge sheet.

3. In order to prove the charges levelled against the accused, the prosecution examined 15 witnesses and marked 23 exhibits and 11 M.Os. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C as to the incriminating circumstances found in the evidence of the prosecution witnesses, which the accused flatly denied as false. No defence witness was examined and no materials were marked on the side of the defence. On consideration of the rival submissions made and scrutiny of the materials available, the lower court found the accused guilty under Section 326 IPC, though not under Section 302 IPC and sentenced to undergo imprisonment as stated above.

4. Advancing his argument on behalf of the appellant, the learned counsel Mr.Swamidoss Manoharan inter-alia made the following submissions: The lower court has failed to consider that there was absolutely no evidence available connecting the accused to the crime. P.Ws.1 to 3, during the relevant time, were working as Supervisor and the deceased was also working as Supervisor, and thus, they were all interested witnesses. At the time of investigation, the Investigating Officer has found that the accused also sustained injuries. He was also sent for medical examination along with memo and the injuries were also found. The prosecution has not come forward to explain the said injuries. There was a delay in the first information, which was not properly explained by the prosecution. Thus, without proper appreciation of the evidence, the lower court has convicted him under Section 326 IPC. In view of the reasons stated above, the accused is entitled to an acquittal in the hands of this Court.

5. Strongly opposing the contentions put forth by the appellant's side, the learned Government Advocate (Criminal side) would contend that there was overwhelming evidence in the instant case, which was properly appreciated by the lower court and the lower court has found the accused guilty under Section 326 IPC, and hence, the judgment of the lower court has got to be affirmed.

6. A careful analysis and appraisement of the evidence available and full consideration of the rival submissions made, this Court is unable to notice any substance in this appeal.

7. Admittedly, the accused Kovil Pillai's son Ganesan and his daughter-in-law Bagyalakshmi were working under the deceased, who was working as Supervisor of Nadumalai Estate. Prior to the occurrence, a complaint as found under Ex.P.8 was lodged by the deceased to his Manager alleging that the son of the accused was discouraging the coworkers and on that count, he was suspended for a period of 20 days. When the daughter-in-law of the accused, namely, Bagyalakshmi was not properly doing her work, the deceased also kept her out of service. Enraged over the same, the appellant/accused has gone to the residence of the deceased on 30.1.1995 and quarrelled with him. At that time, the deceased has asked the accused to come to Muster-roll building, where it could be better discussed. On 31.1.1995 at about 7.00 a.m. when the deceased was proceeding from his house to the Muster-roll building, the accused emerged from the side of the pathway and attacked the deceased with M.O.1 kavathu knife and caused severe injury wo the deceased. This act of the accused was witnessed by P.Ws.1 to 3. All these three eyewitnesses have categorically narrated the occurrence. Their evidence has inspired the

confidence of the Court in view of the cogency and the lower court has correctly relied on their evidence. Immediately, the injured was taken to the hospital, where he was treated by P.W.4 Dr.Thambiran. He issued accident register, which was marked as Ex.P.2 where P.W.4 has narrated the injuries found on the deceased and the statement of the deceased also.

8. On intimation, P.W.14 Head Constable attached to Valparai Police Station proceeded to the hospital and came to know that the injured has died. He received a complaint from P.W.1. On the strength of which, a case came to be registered and investigation was taken up by the Investigating Officer shortly within a few hours after the occurrence. After the inquest made by the Investigating Officer, a requisition was forwarded to Government Hospital, Valparai to conduct postmortem, where P.W.5 Doctor has conducted autopsy on the dead body of the deceased and has given post-mortem certificate Ex.P.6. P.W.5 has opined that the deceased would appear to have died of shock due to massive haemorrhage due to injury to important blood vessels approximately about 6 hours prior to autopsy, and thus, the medical evidence adduced by the prosecution has clearly corroborated the ocular evidence.

9. One adding circumstance in the instant case was the confessional statement made voluntarily by the accused before the Investigating Officer at the time of his arrest in the presence of the witnesses. Pursuant to the same, seizure of MO1, blood stained knife was made. The fact of arrest and recovery of MO1 knife all were well spoken to by P.W.10. Despite cross examination, his evidence as to those facts remained intact. This piece of evidence stood as a corroborative piece of evidence showing the nexus between the accused and the crime in question. All the M.Os were subjected to chemical analysis and the reports have been marked. They have also supported the case of the prosecution. As rightly pointed out by the learned Government Advocate (Criminal side), there was overwhelming evidence in the instant case pointing to the guilt of the accused that it was he who caused injuries to the deceased, which caused his death. The lower court discussed the circumstances and has found that it is not a fit case which would fall under Section 302 IPC, but would fall under Section 326 IPC. This Court, in view of the reasons adduced by the lower court, does not find any reason to deviate from the recordings as to the conviction under Section 326 IPC. 10. Coming to the question of sentence, the lower court has awarded punishment of 7 years RI along with a fine of Rs.10 00/- in default one year RI to the accused. The learned counsel for the appelant brought to the notice of the Court that the accused is aged about 80 years, and hence, some leniency has got to be shown as to the punishment given to the accused. Taking into consideration the facts and circumstances of the case, the Court is of the view that the punishment awarded by the lower court to the accused under Section 3 26 IPC has got to be reduced to four years RI along with fine of Rs.1 000/- in default three months RI. Accordingly, the sentence imposed by the lower court to the accused under Section 326 IPC is reduced to four years RI along with fine of Rs.1000/- in default three months RI. With the above modification,

this criminal appeal is dismissed. The Sessions Judge shall take steps to commit the accused to prison, if he is on bail, to undergo the remaining period of sentence.

Index: Yes

Internet : Yes

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To
1. The Judicial Magistrate, Valparai
2. The Judicial Magistrate, Valparai
through the Chief Judicial Magistrate, Coimbatore
3. The II Addl. Sessions Judge, Coimbatore
4. The II Addl. Sessions Judge, Coimbatore
through the Sessions Judge, Coimbatore
5. The Superintendent, Central Prison, Coimbatore
6. The Public Prosecutor, High Court, Madras
7. The Dy. Inspector General of Police, Chennai-4
8. Mr.V.Jaya Prakash Narayan, Govt. Advocate (Crl side)
High Court, Chennai
9. The Inspector of Police, Valparai Police Station